



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Veterans Administration: Recording and
Liquidating Obligations for Benefits
File: B-226801
Date: March 2, 1988

DIGEST

The Veterans Administration (VA) implements a variety of entitlement programs under which it pays compensation and pension benefits. Compensation and pension benefit claims must be recorded as obligations when eligibility for the benefits is established by adjudication regardless of the amount of resources in available appropriations. The VA violated 31 U.S.C. § 1501 by failing to record compensation and pension benefit claims approved by adjudication between September 12, 1986 and September 30, 1986 as obligations in fiscal year 1986. In addition, since none of VA's fiscal year 1987 appropriation was available for fiscal year 1986 obligations, the Antideficiency Act, 31 U.S.C. § 1341(a)(1), precluded the use of the appropriation to liquidate fiscal year 1986 obligations.

DECISION

Late in our audit of the Veterans Administration's (VA) consolidated financial statements for fiscal year 1986, we discovered that the VA did not record as fiscal year 1986 obligations compensation and pension benefit claims approved by the VA between September 12, 1986 and September 30, 1986. We further discovered that the VA recorded these claims as fiscal year 1987 obligations and paid for the benefits with funds from its fiscal year 1987 compensation and pensions appropriation. In our report on the results of our audit, we stated that we would separately address issues relating to the obligation and payment of compensation and pension benefits. Financial Audit: Veterans Administration's Financial Statements for Fiscal Year 1986 (GAO/AFMD-87-38, p.13, July 1987). This decision addresses these issues.

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For the reasons discussed below, we conclude the VA violated 31 U.S.C. § 1501(a) by failing to record, as fiscal year 1986 obligations, compensation and pension benefit claims which were established by the VA as entitlements in September 1986. In addition, since none of the VA's fiscal year 1987 appropriation was available for fiscal year 1986 obligations, the Antideficiency Act, 31 U.S.C. § 1341(a)(1), precluded the use of the appropriation to liquidate fiscal year 1986 obligations.

BACKGROUND

We requested the views of the General Counsel of the VA on these matters. The General Counsel of the VA responded in a letter dated July 15, 1987 that the VA acted in accordance with guidelines established by the Office of Management and Budget (OMB) and consequently no violation of the Anti-deficiency Act occurred. The General Counsel explained that VA's process for obligating these funds was consistent with OMB Circular A-34, entitled "Instructions on Budget Execution," and an agreement reached between OMB and the VA in 1981 regarding the application of OMB Circular A-34 to the VA. As a result of a February 2, 1981 meeting, VA and OMB agreed that an obligation for a compensation or pension benefit does not occur until a certificate of availability of funds is executed on the voucher for these benefits. See, Memorandum for the record from Assistant Director for Fiscal Systems, VA, C. H. Thoreson, dated February 9, 1981.

According to the VA General Counsel, the processing of new claims for compensation and pension benefits under this agreement is executed as follows. The adjudication sections of the VA regional offices determine eligibility for compensation and pension benefit entitlements and electronically forward this information to VA's Data Processing Center in Illinois. The Processing Center compiles the information every 3 or 4 days onto a computer tape. Approximately 4 to 7 days later, the tape is forwarded to the Department of the Treasury with a voucher from a certifying officer verifying that there are sufficient funds in the Compensation and Pension account to cover these claims for payment. Once the certificate of availability of funds is executed, the obligations are recorded against the appropriation.

Under this procedure, according to the General Counsel of the VA, the computer tapes which contained compensation and pension payment information on claims adjudicated between September 23, 1986 and September 30, 1986 were scheduled for transmission to the Treasury in October 1986. Because the certificates of availability for these claims are executed and transmitted to Treasury in fiscal year 1987, under VA's

normal procedures, the General Counsel maintains they are properly considered fiscal year 1987 obligations. The computer tapes which contained compensation and pension payment information on claims adjudicated between September 12, 1986 and September 22, 1986 were scheduled to be transmitted to the Department of Treasury on September 29, 1986 and September 30, 1986. The General Counsel concedes that claims adjudicated between September 12 and September 22 would have been recorded as fiscal year 1986 obligations but for the fact that VA ran out of funds available in its fiscal year 1986 appropriation and it believed that the recording of these benefits as obligations in excess of available budgetary resources would have violated the Antideficiency Act. It therefore is apparent, although the General Counsel does not explicitly state this, that the VA put off recording these obligations until fiscal year 1987 when funds became available and a certificate of availability of funds could be executed. The VA then liquidated these obligations with funds from its fiscal year 1987 appropriation.

The VA General Counsel stated in his letter that, after reviewing applicable laws, regulations, and Comptroller General decisions, he advised the VA Office of Budget and Finance that, subject to OMB approval, adjudications by regional offices that VA beneficiaries are eligible for compensation or pension benefit entitlements should be recorded as obligations in the same month that the adjudication is made.

DISCUSSION

The VA pays compensation and pension benefits under the following programs: (1) Compensation for Service-Connected Disability or Death, 38 U.S.C. §§ 301-363, (2) Dependency and Indemnity Compensation for Service-Connected Deaths, 38 U.S.C. §§ 401-423, and (3) Pension for Non-Service Connected Disability or Death or For Service, 38 U.S.C. §§ 501-562.

VA compensation and pension benefits are statutorily mandated benefits, known as entitlements, which the VA becomes legally liable to pay in established amounts once it is determined that a beneficiary is eligible for the benefits. See, e.g., 38 C.F.R. § 3.4(b), (c), and § 3.5(b) (1986) (referring to various death and disability benefits as basic entitlements). See also, GAO, A Glossary of Terms Used in the Federal Budget Process 57 (3d ed. March 1981). For example, the government must pay dependency and indemnity compensation (DIC) to survivors of any veteran who dies after December 31, 1956 from a service-connected or compensable disability. See 38 U.S.C. § 410(a)(1982). Once eligibility is established, a surviving spouse receives

monthly DIC benefits based on the pay grade of the deceased veteran. See 38 U.S.C. § 411(a)(1982).

Eligibility for compensation and pension benefits is established in VA regional offices through an adjudication process. Therefore, on the date a claimant's eligibility is established by adjudication, the VA becomes legally liable to pay the established benefits.

VA recorded compensation and pension benefit claims adjudicated in September 1986 as fiscal year 1987 obligations and paid the benefits from its fiscal year 1987 appropriation because the certificates of availability of funds to pay the benefits were executed in fiscal year 1987. The first legal issue presented is whether the date of obligation for these claims should be based on when the claims were deemed valid by adjudication or when funds became available to pay these claims.

Recording Claims as Obligations

Under 31 U.S.C. § 1501(a)(9) (1982), an amount must be recorded as an obligation when it is supported by documentary evidence of a legal liability of the government against an available appropriation or fund. According to OMB Circular No. A-34, section 23.9, August 1985, pension and annuity amounts are to be considered obligations when they are determined administratively or judicially to be due and payable and when no further action is required by Congress to authorize payment.

VA becomes legally liable for compensation and pension benefits when the claims for such benefits are administratively adjudicated as due and payable. At this point, since no further congressional action to authorize payment is required, the obligation for these benefits occurs by operation of law, and must be recorded under 31 U.S.C. § 1501(a)(9). By delaying obligation until the certification of availability of funds was executed, VA violated § 1501(a)(9).

The General Counsel of the VA draws a distinction between claims approved in September 1986 and scheduled for transmission to the Treasury, under normal procedures, in fiscal year 1987 and claims adjudicated in September 1986, the transmissions of which to the Treasury were delayed beyond September, the normal time for processing, because of lack of funds. We do not find this distinction to have any significance, however, because the obligation for all claims approved in September 1986 arose in fiscal year 1986 and should have been recorded as fiscal year 1986 obligations.

The Administrator of the VA stated in a letter dated June 17, 1987 to the Director of OMB that VA "is operating under the premise that obligations can not exceed the current level of funding availability." Thus, the OMB and VA agreement to not recognize an obligation for adjudicated claims until the certificate of availability of funds is executed may have been premised in part on the belief that recording these claims as obligations in excess of amounts available in an appropriation would violate the Antideficiency Act. However, we concluded in 65 Comp. Gen. 4 (1985) that entitlements must be recorded as obligations when they arise regardless of the amount of available budgetary resources. Further, we held that recording entitlements as obligations when they arise in excess of available budgetary resources would not violate the portions of the Antideficiency Act set forth at 31 U.S.C. § 1341(a)(1) (1982). We explained that the prohibitions contained in the Antideficiency Act regarding obligations are directed at discretionary obligations entered into by administrative officers and that the Act specifically provides an exception for mandatory obligations which are authorized by law to be made in excess of or in advance of appropriations. 65 Comp. Gen. at 9. Therefore, the VA would not have violated the Antideficiency Act by recording these benefits as obligations against its fiscal year 1986 appropriation in excess of available budgetary resources. The Administrator acknowledged our 1985 decision in his June 17, 1987 letter to OMB and proposed that VA apply it to all entitlement programs.

Antideficiency Act

We now examine whether the Antideficiency Act precluded VA from expending its fiscal year 1987 appropriation for fiscal year 1986 obligations. To determine whether the Antideficiency Act precluded using the 1987 appropriation to liquidate fiscal year 1986 obligations, we first must determine the period of availability for this appropriation. The Continuing Resolution for fiscal year 1987, Pub. L. No. 99-591, § 101(g), 100 Stat. 3341, 3341-242 (1986) appropriated amounts to the VA as provided for in H.R. 5313, the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1987, to the extent and the manner provided for in the conference report and joint explanatory statement of the Committee of Conference (H.R. Rep. No. 99-977) as filed in the House of Representatives on October 7, 1986. H.R. 5313, 99th Cong., 2d Sess., 132 Cong. Rec. 14758 (1986), generally provided "[t]hat the following sums are appropriated . . . for the fiscal year ending September 30, 1987." Specifically, with regard to the VA, the bill appropriated \$14,364,400,000 for the payment of compensation and pension benefits "to remain available until

expended." H.R. 5313, 299th Cong., 2d Sess., 132 Cong. Rec. 14764 (1986). Section 1502(a) of Title 31 of the United States Code provides that:

"[t]he balance of an appropriation or fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this title."

We have long held that unless otherwise provided, this language restricts use of an appropriation to expenditures required for the service of the particular fiscal year for which the appropriation was made. In other words, a liability incurred in a fiscal year may be charged only against an appropriation available for that fiscal year. E.g., 55 Comp. Gen. 768, 773 (1976) and cases cited therein.

Therefore, since VA's fiscal year 1987 appropriation was available only for the payment of compensation and pension benefits arising during fiscal year 1987 and subsequent years, it was not available to pay benefits adjudicated (and therefore obligated) in fiscal year 1986 unless such authority is otherwise provided. In this regard, nothing in the language or the legislative history of the appropriation act or any other law supports the view that the fiscal year 1987 appropriation was available for the payment of obligations arising prior to fiscal year 1987. Further, VA does not argue that its fiscal year 1987 appropriation was available for the payment of obligations arising during fiscal year 1986. Because the Antideficiency Act precludes the authorization of an expenditure exceeding an amount available in an appropriation,^{1/} we conclude that funds which became available on October 1, 1986 were not legally available to liquidate obligations which arose between September 12 and September 30, 1986.

Our above analysis and conclusion is, in all material respects, consistent with the position taken in a recent audit report which concluded that the Food and Nutrition

^{1/} Congress recognized this problem in considering VA's appropriation for fiscal year 1988. In response, the Congress added a provision to VA's fiscal year 1988 appropriation providing VA with specific statutory authority to use fiscal year 1988 appropriations to pay for entitlement obligations required to be recorded by law within the last quarter of fiscal year 1987. See Continuing Resolution for the fiscal year 1988, Pub. L. No. 100-202 (enrolled copy, p. 493) (1987).

Service of the Department of Agriculture violated the Antideficiency Act by paying for meals provided as part of the Child Nutrition Programs in September of each fiscal year with funds from the subsequent year's appropriation without the authority to do so. Anti-Deficiency Act: Agriculture's Food and Nutrition Service Violates the Anti-Deficiency Act (GAO/AFMD-87-20, March 1987). In fiscal years 1980 to 1982, the Service was given specific statutory authority to record and liquidate obligations for meals served in September of one fiscal year in the next fiscal year. Beginning in fiscal year 1983, this statutory authority was no longer included in Agriculture's appropriation act but the Service continued to delay obligations and make expenditures from the subsequent year's appropriation.

Similarly, in this case, the VA did not obligate compensation and pension benefits which arose in fiscal year 1986 until fiscal year 1987 and liquidated these obligations with funds from its fiscal year 1987 appropriation. Since none of VA's fiscal year 1987 appropriation was available for fiscal year 1986 obligations, the Antideficiency Act precluded the use of the appropriation to liquidate fiscal year 1986 obligations.

Since the VA should have obligated these claims against its fiscal year 1986 appropriation even though resources were not available in that appropriation, the VA should have requested a supplemental appropriation to liquidate these obligations as soon as it was able to predict there would be a shortfall in its fiscal year 1986 appropriation. In its report on the 1988 appropriation bill, the Senate Committee on Appropriations recognized that supplemental or emergency appropriations should be relied on by the VA to fund entitlement programs if appropriations run short at the end of a fiscal year. However, the Committee further recognized that sufficient funding may not always be available (as was the case in September 1986) which could result in the interruption of monetary payments while supplemental or emergency appropriations are being considered. Therefore, the Committee submitted the aforementioned provision providing VA with specific statutory authority to use fiscal year 1988 appropriations to pay for obligations incurred in the last quarter of fiscal year 1987. S. Rep. No. 192, 100th Cong., 1st Sess. 102 (1987).

CONCLUSION

We conclude that the VA violated 31 U.S.C. § 1501 by failing to record compensation and pension benefit claims adjudicated between September 12, 1986 and September 30, 1986 as obligations in fiscal year 1986. In addition, since none of

VA's fiscal year 1987 appropriation was available for fiscal year 1986 obligations, the Antideficiency Act precluded the use of the appropriation to liquidate fiscal year 1986 obligations.

Milton F. Fowler
for Comptroller General
of the United States